

## *Death on the Terraces: The Contexts and Injustices of the 1989 Hillsborough Disaster*

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The crush came ... it wasn't a surge. It was like a vice getting tighter and tighter and tighter. I turned Adam 'round to me. He was obviously in distress. There was a police officer, about five or six feet away and I started begging him to open the gate. I was screaming. Adam had fainted and my words were 'My lovely son is dying' and begging him to help me and he didn't do anything. I grabbed hold of Adam's lapels and tried to lift him over the fence. It was ten feet or thereabouts with spikes coming in. I couldn't lift him. So I started punching the fence in the hope I could punch it down. Right at the beginning when I was begging the officer to open the gate, if he'd opened it I know I could've got Adam out. I know that because I was there.<sup>1</sup>

This is Eddie Spearritt's testimony to the last moments of his son's life. Adam, eventually evacuated from the Hillsborough terraces, was pronounced dead at the Northern General Hospital, Sheffield at approximately 4.45 p.m. on 15 April 1989. He was one of 96 men, women and children who died as a result of injuries sustained on the terraces or, as became increasingly clear, because the police response to the impending disaster and the medical response that followed were inadequate. Of the 96 who died only 14 were taken to hospital. The rest were pronounced dead at the ground and, in body bags, were laid out on the floor of the Hillsborough gymnasium. Pat Nicol, whose ten-year-old son, Lee, was killed, spoke for many when she said, 'You don't expect to go to a football match and die'.<sup>2</sup>

Eddie Spearritt came close to death. Having struggled in vain to save Adam he lost consciousness and collapsed under foot in the crush of pen 4. This was some time around 3 p.m., six minutes before the FA Cup Semi-Final between Liverpool and Nottingham Forest was stopped, and 20 minutes before the dead and dying in central pens 3 and 4 were dragged through two narrow gates across the perimeter track and onto the pitch. Two hours are missing from Eddie's life. The first medical record of him at the hospital is his admission to intensive care at

5 p.m. Following the chaos of the pens' evacuation, and given the paucity of immediate necessary medical treatment and facilities, it is clear that an unknowable number of those who died could have been saved. Eddie has no knowledge of his whereabouts between 3 p.m. and 5 p.m. It appears he had been presumed dead, as were others who also recovered. He agonizes over Adam's death and whether he too might have been saved.

As the disaster was happening, in full view of the police control box high above the Leppings Lane terrace, a further tragedy was set in motion. The South Yorkshire Police match commander, Chief Superintendent David Duckenfield, informed Graham Kelly, then Chief Executive of the Football Association, that Liverpool supporters had forced entry through an exit gate causing an 'inrush' onto the already packed terraces. Within minutes this version of events was broadcast worldwide. Jacques Georges, then President of FIFA, railed against 'people's frenzy to enter the stadium come what may, whatever the risk to the lives of others'. They 'were beasts waiting to charge into the arena'.<sup>3</sup> Thus, Liverpool fans were responsible for the deaths of 'their own'. The lens of hooliganism was firmly in place.

This was also the version relayed by the police to the South Yorkshire Coroner, Dr Stefan Popper en route to the stadium. He instructed the taking and recording of blood alcohol levels of all who died, including children. This was unprecedented. As the pathologists' reports would establish the medical cause of death it was clear that the Coroner considered alcohol to be a significant factor in the disaster. Within hours, bereaved families queued outside the gymnasium to identify their loved ones. The presentation of bodies in body bags, and the casual treatment of the bereaved, combined insensitivity with callousness. Grief-stricken relatives were 'interrogated' regarding the drinking habits and 'criminal' records of their loved ones. The next day the Prime Minister Margaret Thatcher visited Sheffield accompanied by the Home Secretary, Douglas Hurd. She was briefed that there 'would have been *no* Hillsborough if a mob, who were clearly tanked up, had not tried to force their way into the ground'.<sup>4</sup>

Two days later the *Sheffield Star* (18 April 1989) published the first serious police allegations as facts concerning Liverpool supporters not only causing the disaster, but also attacking rescue workers and stealing from the dead. Its headline was: 'Drunken Attacks on Police: Ticketless Thugs Staged Crush to Gain Entry'. This included an allegation that 'yobs' had 'urinated on policemen as they gave the kiss of life to stricken victims'. Local politicians and Police Federation representatives, without any substantiating evidence, reiterated the allegations, and on 19 April the *Sun* cleared its front page. It pronounced: 'The Truth: Some Fans Picked Pockets of Victims; Some Fans Urinated on the Brave Cops; Some Fans Beat Up PC Giving Kiss of Life'. A further eight newspapers carried the allegations including 'sex jibes over a girl's corpse' (*Sheffield Star* 19 April 1989). It later transpired that the *Sun* editor, Kelvin Mackenzie, had considered running the headline 'You Scum'.<sup>5</sup> As the Home Office Inquiry under Lord Justice Taylor

commenced, Duckenfield's instant reaction to blame the fans, thereby exonerating the police, had established a broad and seemingly legitimate constituency. Not only did it determine the course of events in the immediate aftermath, but it set a wider media and political agenda.

#### THE HILLSBOROUGH STADIUM

One of the greatest problems we have is access to the ground, particularly at the Leppings Lane end. The redesigned turn stiles [*sic*] do not give anything like the access to the ground, either on the Leppings Lane terraces or in the West Stand, needed by away fans. On occasions last season when large numbers attended, we had away supporters who were justifiably [*sic*] irate because of the inefficiency of the system, which was turned on the police and could have resulted in public disorder.<sup>6</sup>

The Hillsborough Football Stadium opened in 1899 and, like so many other football stadia, had been modified to meet the requirements of the 1975 Safety of Sports Grounds Act, and, subsequently, revisions to the 1976 Home Office Guide to Safety at Sports Grounds, brought about by the Popplewell inquiry into the deaths at Bradford, Birmingham and Heysel.<sup>7</sup>

Hillsborough was considered by the football authorities to be one of England's best grounds. While parts of the stadium had been upgraded, the essential fabric of the Leppings Lane terrace was unchanged. Previous lessons regarding crowd safety had been ignored and the modifications to the terrace prioritized crowd control and segregation. Following serious crushing in 1981, resulting in injuries to 38 fans, the Leppings Lane terrace was divided by lateral fences into three separate enclosures or pens, thus preventing movement along the terrace. Tragedy had been narrowly avoided by opening the gates in the trackside perimeter fencing. In 1985 the police requested further lateral fences and the terrace was divided into five pens. Both central pens, directly behind the goal, were fed by a 1 in 6 gradient tunnel beneath the West Stand, built in 1965 in preparation for the 1966 World Cup. Emerging from the tunnel, fans walked to the right or left of a fence into pens 3 or 4 respectively. A high, overhanging fence mounted on a wall separated the terraces from the perimeter track. There was restricted access into each pen through a narrow, locked gate. The crush barriers were reviewed in 1979 leaving a mixture of relatively new and old. Modifications made in 1985 and 1986 resulted in different barrier distribution in each pen. In pen 3, for example, a diagonal gap stretched from the front barrier to the back of the terrace. A crush down this channel would clearly place the front barrier under considerable pressure.

The West Stand seated 4,500 spectators. The uncovered Leppings Lane terrace held 10,100. Entry into the North Stand was also from the Leppings Lane turnstiles. Thus 24,256 fans converged on 23 turnstiles located in a small, divided

outer concourse. The 10,100 fans with tickets for the Leppings Lane terrace walked through outer gates onto the concourse to queue at seven turnstiles. The remaining 14,156 ticket-holders for North and West Stands accessed 16 turnstiles through the adjoining concourse. In the hour before kick-off this tightly confined area, a shop wall to the left and a fence above the River Don to the right, had to cope with 25,000 people unfamiliar with the layout of the stadium. The outmoded turnstiles regularly malfunctioned. Although an electronic counting system recorded the numbers accessing the terrace there was no way of knowing the distribution between the pens. The two central pens, with capacities of 1,000 and 1,100, were always the first to fill. The doors at the head of the tunnel feeding the central pens could be closed once it was estimated that the pens' capacities had been reached. It was a calculation based on observation rather than actual numbers entering.

It flew in the face of the Moelwyn Hughes' Inquiry's recommendations after the Burnden Park disaster of 1946 that all terrace enclosures should be accurately monitored. Moelwyn Hughes 'feared that the disaster at Bolton might easily be repeated at 20 to 30 grounds'. He concluded: 'How simple and how easy it is for a dangerous situation to arise in a crowded enclosure. It happens again and again without fatal or even injurious consequences.' All that was necessary was the occurrence of one or two additional factors and that inherent 'danger' would be transformed into 'death and injuries'.

15 APRIL 1989

It was a beautiful spring morning as Liverpool fans embarked on their trip across the Pennines to Sheffield. The last thing on anyone's mind was danger. For the second time in successive years their team had drawn Nottingham Forest in the semi-finals of the FA Cup. Hillsborough was hired by the Football Association as a neutral venue and policing and crowd control arrangements were virtually identical. Liverpool fans were allocated the West Stand, the Leppings Lane terrace and the North Stand. It was an all-ticket match and the only instruction on the tickets was that spectators were expected to be inside the stadium 15 minutes before kick-off. Fans travelled by train, coaches, transits and cars. Coaches and transits were stopped en route and searched by police. Arriving in Sheffield, all were directed to designated car parks, searched and briefed by South Yorkshire Police officers. Those arriving by train were escorted to the stadium. Delays on the journey meant that thousands of Liverpool fans arrived in Sheffield in the hour before the 3 p.m. kick-off.

At 2.30 p.m. a police officer noticed coaches 'arriving one after another'. Ten minutes later fans were disembarking coaches 'about a quarter of a mile away' and a 'large number of Liverpool supporters were trying to park'. With train escorts arriving just before 2.30 p.m., coaches backed up along main roads and cars attempting to park, it was clear that the steady stream of supporters arriving at the

Leppings Lane turnstiles prior to 2.15 p.m. would become a torrent. And so it happened. Lack of stewarding and the absence of filtering along Leppings Lane contributed significantly to the sudden and intense build-up in the narrow outer concourse area. Any semblance of queuing evaporated as the bottleneck, the concern raised by the 1986 internal police memorandum, began to take its toll. The simple equation was that more people were arriving at the rear of the enclosed concourse than were passing through the turnstiles at the front. A serious crush ensued. Even mounted police became trapped in the crowd and fans struggled to breathe. The senior officer outside decided that the 'only practical way to prevent deaths outside would be to open the [exit] gates' thereby allowing people into the stadium and relieving the crush. He 'radioed ground control [the police control box inside] and asked for the gates to be opened. There was no acknowledgement'. Thinking his radio was defective he used another and 'repeated my request'. Again, 'there was no acknowledgement'.<sup>8</sup>

Chief Superintendent David Duckenfield assumed responsibility for policing Hillsborough Stadium just 21 days before the semi-final. He and his assistant, Superintendent Bernard Murray, watched the congestion build at the turnstiles on CCTV monitors. It was tense in the control box as the request to open the exit gates came through. Duckenfield, a match commander with virtually no experience of policing football in a stadium with which he was unfamiliar, faced a massive dilemma. He thought: 'A man who I have known for many years, a man who I respect and admire, was demanding of me something I would not normally give ... [he] was telling me that unless I opened the gates there would be serious injury and possibly death.' He was 'all consumed'. Murray broke the long silence: 'Mr Duckenfield, are you going to open the gate?' After further hesitation, and as if thinking aloud, Duckenfield responded: 'If there's likely to be death or serious injury outside I have no option than to open the gates.' He instructed Murray to open the gates.<sup>9</sup>

Despite being located in a control box directly above the Leppings Lane terrace, they did not consider that the crowd distribution in the pens might be a problem. Yet photographs taken moments before show both central pens were packed while the side pens were sparsely populated. The clear and obvious danger was that in relieving the life-threatening crush at the turnstiles a worse situation would develop on the terraces. Murray's mind-set is evident from an earlier interchange with a chief inspector who had inquired whether the terrace should be filled one pen at a time. Murray's reply was that all pens should be open from the outset and fans could be left to 'find their own level'.<sup>10</sup>

When gate 'C' opened there was instant relief around the outer concourse. Fans, including Eddie and Adam Spearritt, who had stood back from the crush walked through unattended and without police direction. Directly opposite was the 1 in 6 gradient tunnel beneath the West Stand, signposted 'STANDING'. It led into the packed central pens. Neither police nor stewards thought to close the tunnel and redirect incoming fans to the side pens. Over 2,000 fans walked down

and compression was immediate. Faces were jammed against the perimeter fence, people fell and in pen 3 a barrier, near the bottom of the diagonal channel, collapsed bringing down a tangled mass of bodies. As the match kicked-off the thunderous roar of the crowd drowned out the screams of the dying. The police failed to respond and forced those trying to escape the crush back into the pens. Officers on the perimeter track were under explicit orders not to open the narrow perimeter gates without authorization of a senior officer.

The failure to close off the tunnel before opening Gate C was compounded by the failure to respond immediately and effectively to the disaster unfolding on the terraces. Once the two narrow perimeter track gates were opened the full horror began to dawn. Over 500 people were dead, dying or injured. Restricted access prevented effective and speedy evacuation of the pens. The match was abandoned at 3.06pm and fans and some police officers tried to resuscitate those who had lost consciousness. As these distressing scenes were taking place, Duckenfield told the Assistant Chief Constable that it was a 'pitch invasion'. He radioed for reinforcements including dog handlers. Minutes later he lied to the FA officials, not mentioning that he had directed his officers to open the exit gates. In giving evidence to the Taylor Inquiry, Duckenfield stated: 'The blunt truth [was] that we had been asked to open a gate. I was not being deceitful ... I just thought at that stage that I should not communicate fully the situation ... I may have misled Mr Kelly.'<sup>11</sup> He did. And, unwittingly, Kelly reiterated the lie to the awaiting media. As the disaster happened the fans were blamed.

#### FROM OFFICIAL INQUIRY TO JUDICIAL SCRUTINY

In the immediate aftermath the Home Secretary, Douglas Hurd, appointed Lord Justice Taylor to conduct an Inquiry 'into the events at Sheffield Wednesday Football Ground on 15 April 1989 and to make recommendations about the needs of crowd control and safety at sports events'.<sup>12</sup> Hurd appointed the West Midlands police to assist in the Inquiry. The Force also conducted the criminal investigation and serviced the inquests as 'coroner's officers'. Apart from oral evidence to the public hearings, the Inquiry team processed 2,666 telephone calls, 3,776 statements and 1,550 letters. Taylor produced an Interim Report within four months concluding that the 'main cause' of the disaster was 'overcrowding' and the 'main reason' was a 'failure of police control'. He also criticized Sheffield Wednesday Football Club, their safety engineers and the local authority which had failed to issue an up-to-date licence for the stadium. But he directed his most damning conclusions towards South Yorkshire police.

Taylor condemned senior officers as 'defensive and evasive', considering 'neither their handling of problems on the day nor their account of it in evidence showed the qualities of leadership to be expected of their rank'. It was 'a matter of regret that at the hearing, and in their submissions, South Yorkshire Police were not prepared to concede that they were in any respect at fault for what had

occurred'.<sup>13</sup> Duckenfield's 'capacity to take decisions and give orders seemed to collapse'. He had failed to give 'necessary consequential orders' after he had sanctioned the opening of the gates and he failed 'to exert any control' once the disaster was in train. Worse still, he lied; his 'lack of candour' triggering around the world 'a widely reported allegation' against fans.<sup>14</sup> The severity of Taylor's criticisms, alongside his exoneration of the fans' behaviour, took many commentators by surprise. In December 1989 the South Yorkshire police accepted civil liability in negligence and paid damages to the bereaved. Subsequently, in a House of Lords judgment, Lord Keith concluded that the Chief Constable had 'admitted liability in negligence in respect of the deaths and physical injuries'.<sup>15</sup> In a later Divisional Court judgment Lord Justice McCowan stated that the force 'had admitted fault and paid compensation'.<sup>16</sup> These words were reiterated in the House of Commons by the Attorney General.<sup>17</sup>

In March 1990, following consultation with the Director of Public Prosecutions (DPP), the Coroner resumed the adjourned inquests on a 'limited basis' ahead of the decisions regarding criminal prosecution or disciplinary action. He held unprecedented 'preliminary hearings' for each of the deceased dealing only with the medical evidence, blood alcohol levels, the location of bodies prior to death and the identification. There was no discussion of 'how' the person died. The often sparse and inconsistent evidence in each case was summarized and presented to the hearing by a designated West Midlands police officer. Witness statements on which summaries were based were not disclosed and no cross-examination was allowed. What the jury heard was a mixture of interpretation, selection and conjecture presented, unchallenged, as fact. Unable to access primary statements and cross-examine the evidence, bereaved families were left with numerous unanswered questions, disqualified as being outside the agreed parameters of the preliminary hearings.

Four months later the DPP decided there was 'no evidence to justify any criminal proceedings' against any organization involved and 'insufficient evidence to justify proceedings against any officer of the South Yorkshire Police or any other person for any offence'.<sup>18</sup> The Coroner resumed the inquests in generic form. They ran from 19 November 1990 to 28 March 1991. Two hundred and thirty witnesses were called and 12 interested parties (six of whom were police interests) were represented. One barrister represented 43 families. Despite the cost and length of the inquests and the number of witnesses called, disclosure of evidence was limited. Once again, police witnesses emphasized the very issues discounted by Taylor: fans' drunkenness, hooliganism, violence and conspiracy to enter the ground without tickets. In summing up, the Coroner steered the jury away from returning a verdict of unlawful killing. He told them that an accidental death verdict could 'straddle the whole spectrum of events' including 'a situation where you are ... satisfied there has been carelessness, negligence ... and that someone would have to make compensation payments in civil litigation'.<sup>19</sup> Accidental death would not mean absolution 'from all and every measure of blame'. There could

have been mistakes made and 'very serious errors' but being 'incompetent is not the same as saying that a person is being reckless'.<sup>20</sup> After two days of deliberation the jury returned a majority verdict of accidental death.

Despite the Police Complaints Authority's determination to bring disciplinary proceedings against the match commander and his assistant for 'neglect of duty', Duckenfield left the police on ill-health grounds and the case against Murray was withdrawn. Six families took test cases to the Divisional Court aiming to quash the inquests' verdicts on the grounds of irregularity of proceedings, insufficiency of inquiry and the emergence of new evidence. The Court ruled in favour of the Coroner, finding that the inquests had been properly conducted, evidence had not been suppressed and his direction of the jury had been 'impeccable'. In June 1997, following publication of *No Last Rights*<sup>21</sup> and the screening of Jimmy McGovern's award-winning drama documentary *Hillsborough* (ITV, December 1996), Jack Straw, the recently-elected Labour Government's Home Secretary, announced an independent judicial scrutiny 'to get to the bottom of this once and for all'.<sup>22</sup> The Scrutiny, without precedent and conducted by former MI6 Commissioner Lord Justice Stuart-Smith, would review evidence not available to previous inquiries or investigations. 'New' evidence had to be of such significance that it would have resulted in prosecutions or changed the outcomes of the Taylor Inquiry or the inquests. Stuart-Smith visited the South Yorkshire police and took evidence from 18 bereaved families, submissions from the Hillsborough Family Support Group and other concerned parties. In February 1998 he presented his report to the Home Secretary who greeted it as 'thorough', 'comprehensive', 'dispassionate', 'objective' and 'impartial'. Stuart-Smith's conclusion was that neither the Taylor Inquiry nor the inquest had been flawed and the so-called 'new' evidence did not add 'anything significant' to what was already known.<sup>23</sup>

The Home Secretary ignored serious allegations made to Stuart-Smith by the author and a former South Yorkshire police officer. They revealed that in the immediate aftermath police officers were instructed not to record events in their pocket books but to submit hand-written 'recollections' of events. Unusually, they were encouraged to include emotions, comment and opinion as they were solely for the information of legal advisors, were 'privileged' and, therefore, not subject to disclosure. The 'recollections' were gathered by senior officers, submitted to the force solicitors and returned to the Head of the South Yorkshire Police Management Services as part of a systematic process of 'review and alteration'.<sup>24</sup> A review team of senior officers, appointed by the Chief Constable, then transformed the 'recollections' into formal statements and had them signed by individual officers. It amounted to an institutionalized process clearly intended to remove all criticism of senior officers and operational policy while emphasizing misbehaviour by fans.

Over 400 'recollections' were processed. In a confidential transcript of a meeting between Stuart-Smith and the former Head of Management Services, the latter stated that 'the police had their backs to the wall' and it was 'absolutely



natural for them to concern themselves with defending themselves'.<sup>25</sup> A former police officer, interviewed by the author, gave oral evidence to Stuart-Smith. He stated that 'a certain chief superintendent' took him and his colleagues for a drink. They were told, 'unless we all get our heads together and straighten it out there are heads going to roll'.<sup>26</sup> None of this impressed Stuart-Smith. He concluded that in a few cases 'it would have been better' not to have made alterations. At worst it constituted an 'error of judgement' but not 'unprofessional conduct'.<sup>27</sup> There would have been serious implications in finding otherwise. It transpired the West Midlands police investigators, the Treasury solicitor, the Coroner and Lord Justice Taylor were aware that the statements were written initially as personal recollections, under the guarantee of non-disclosure, and then transformed into criminal justice act statements through a carefully managed process of review and alteration.

Despite Taylor's unequivocal condemnation of senior police officers, he condoned their privileged access to the investigations and inquiries and the reconstitution and registration of the 'truth' to best advantage the interests of the force. His silence on the process of review and alteration compromised his Inquiry.<sup>28</sup> Yet lack of disclosure of evidence, alongside ignorance of the process through which police statements were taken, severely hindered and disadvantaged bereaved families and their lawyers. The DPP's decision not to prosecute on the grounds of insufficiency of evidence gave no indication of the quality of evidence in his possession. At the inquests the use and selective presentation of evidence by West Midlands police officers prevented disclosure of the original statements and their cross-examination. The South Yorkshire police held all the evidence and used it to establish and sustain their defence.

#### A CASE TO ANSWER

In August 1998 the Hillsborough Family Support Group initiated a private prosecution against David Duckenfield and Bernard Murray. It was the culmination of a decade's campaigning to establish criminal liability and to access key documents, witness statements and personal 'body files' on each of the deceased compiled by the police investigators. On 16 February 2000 Mr Justice Hooper committed the officers for trial. They were charged with manslaughter and misconduct in a public office. Duckenfield was also charged with misconduct 'arising from an admitted lie told by him to the effect that the [exit] gates had been forced open by Liverpool fans'. The judge summarized the cases for the prosecution and defence as follows:

It is the prosecution's case that the two defendants are guilty of manslaughter because they failed to prevent a crush in pens 3 and 4 of the West Terraces [Leppings Lane] 'by failing between 2.40 and 3.06 p.m. to procure the diversion of spectators entering the ground from the entrance to the pen'

... that police officers should have been stationed in front of the tunnel leading to the pen to prevent access. It appears, at this stage, to be the defence case that neither of the officers, in the situation in which they found themselves, thought about closing off the tunnel or foresaw the risk of serious injury in the pen if they did not do so. The prosecution submit that they ought to have done. This is likely to be the most important issue in the case.<sup>29</sup>

The judge noted the bereaved had been left with 'an enduring grief' and 'a deep seated and obviously genuine grievance that those thought responsible' had not been prosecuted nor 'even disciplined'. Yet both defendants, 'must be suffering a considerable amount of strain'. The 'greatest worry' for a police officer was 'the thought of going to prison' where they would run the risk of 'serious injury if not death'. While committing them for trial he took a 'highly unusual course' to 'reduce to a significant extent the anguish being suffered'.<sup>30</sup> He assured them that if found guilty of manslaughter they would not face a prison sentence. It was an extraordinary decision. Again, it appeared that police officers were receiving special treatment. The bereaved families and their lawyers were stunned but nothing could be voiced, published or disclosed until after the trial.

The trial opened on 6 June 2000 at Leeds Crown Court and ran for seven weeks. A sombre mood prevailed. The prosecution's case was 'described simply'. People died because they could not breathe and the crush was due to overcrowding 'caused by the criminal negligence of the two defendants ... They had been grossly negligent, wilfully neglecting to ensure the safety of supporters'. Their negligence was not the sole cause of the disaster. The ground was 'old, shabby, badly arranged, with confusing and unhelpful sign-posting ... there were not enough turnstiles'. There existed a 'police culture ... which influenced the way in which matches were policed'. Yet, the 'primary and immediate cause of death' lay with the defendants' failures. Each defendant 'owed the deceased a duty of care ... his negligent actions or omissions were a substantial cause of death' and the 'negligence was of such gravity as to amount to a crime'. For the first time the essence of the case had been articulated in full, in public and without interruption. A bereaved mother commented: 'Whatever happens now I have the satisfaction of seeing those men brought to court because it has been decided that there is a case to answer'.<sup>31</sup>

Duckenfield did not give evidence but considerable time was devoted to detailing his evidence to the Taylor Inquiry. The judge called Duckenfield's predecessor, former Chief Superintendent Mole, as he had drafted the police operational order. The judge introduced him as a crowd safety 'expert'. Murray also gave evidence, stating he had been 'haunted by the memory' of Hillsborough. Closing off the tunnel was 'something that did not occur to me at the time and I only wish it had'. While not recognizing how packed the central pens had become, he denied he had been 'indifferent to the scenes ... I did not see anything occurring on the terrace which gave me any anxiety'.<sup>32</sup>

The judge presented the jury with four questions. First, 'Are you sure, that by having regard to all the circumstances, it was foreseeable by a reasonable match commander that allowing a large number of spectators to enter the stadium through exit gate C without closing the tunnel would create an obvious and serious risk of death to the spectators in pens 3 and 4?' If 'yes' they were to move to question 2, if 'no' the verdicts should be 'not guilty'. Second, could a 'reasonable match commander' have taken 'effective steps ... to close off the tunnel' thus preventing the deaths? If 'yes', they were to move to question 3, if 'no' the verdicts should be 'not guilty'. Third, was the jury 'sure that the failure to take such steps was neglect?' If 'yes', it was on to question 4, if 'no' the verdicts should be not guilty. Finally, was the 'failure to take those steps ... so bad in all the circumstances as to amount to a very serious criminal offence?' If 'yes', the verdicts should be 'guilty'; if 'no' they should be 'not guilty'.<sup>33</sup>

Each question had to be contextualized 'in all the circumstances' in which the defendants had acted. Centrally, did the circumstances of chaos and confusion impede or mitigate the senior officers' decisions? On opening Gate C, was an obvious and serious risk of death in the central pens 'foreseeable' by a 'reasonable match commander?' Not someone of exceptional experience and vision, but an 'ordinary' or 'average' match commander. Even if *gross* negligence could be established, question four demanded that it had to be so bad in the *circumstances* that it constituted a serious criminal offence. For, while gross negligence might result in death, it does not necessarily amount to a serious criminal act.

The prosecution argued that the police 'mind-set' of 'hooliganism' at the expense of crowd safety amounted to 'a failure' best illustrated 'in the word neglect'. It was not a failure caused by the urgency of a 'split-second decision' but 'a case of slow-motion negligence'. The prosecution had presented witness evidence that drew a 'clear, cogent, overwhelming picture from all four corners of the ground': the pens were already dangerously overfull when Duckenfield ordered the opening of the exit gate. If all the witnesses could recognize this fact then Duckenfield and Murray, in the control box, could not miss it. Not only could Duckenfield and Murray see the 'dangerously full pens' but they had adequate 'thinking time' to seal the tunnel and redirect the fans. Their failure amounted to negligence. Not postponing the kick-off 'intensified the responsibilities of those who had taken the decision to get it right'. It was a serious criminal offence because 'thousands of people' had been affected by the breach of trust in the officers.<sup>34</sup>

Duckenfield's counsel replied that the events were 'unprecedented, unforeseeable and unique'. Rather than offering hooliganism as the cause of the crush he maintained that a 'unique, unforeseeable, physical phenomenon', without precedent in the stadium's history, occurred in the tunnel. It projected people forward with such ferocity that it killed people on the terraces. His explanation was that a small minority of over-eager and enthusiastic fans who had caused crushing at the turnstiles *perhaps* was responsible for the explosion of unprecedented force in the

tunnel. It was a far-fetched explanation aimed at producing a hidden cause that could not have been anticipated and could not be verified.<sup>35</sup>

Murray's counsel argued that what happened was not 'slow-motion negligence', as described by the prosecution, but 'a disaster that struck out of the blue'. The deaths could not have been foreseen and no reasonably competent senior officer could have anticipated the sequence of events. While the overall police operation might have 'had many deficiencies' Duckenfield and Murray should not be singled out to 'carry the can'. The terraces had been authorized as safe, the fans 'finding their own level' was taken for granted. It was 'Mole's policy, Mole's custom and practice'. A conviction would make Murray a 'scapegoat'.<sup>36</sup>

In his summary the judge emphasized that the case had to be assessed 'by the standards of 1989' when 'caged pens were accepted' and 'had the full approval of all the authorities as a response to hooliganism'. The defendants had to be regarded as 'reasonable professionals', meaning 'an ordinary competent person', not a 'Paragon or a prophet'. When the exit gates were opened, 'death was not in the reckoning of those officers'. They were responding to a 'life and death situation' at the turnstiles and the jury had to 'take into account that this was a crisis'. The jury should 'be slow to find fault with those who act in an emergency', a situation of 'severe crisis' in which 'decisions had to be made quickly'. He noted the 'huge difference between an error of judgement and negligence', that 'many errors of judgement we make in our lives are not negligent' and 'the *mere* fact that there has been a disaster does not make these two defendants negligent'. A guilty verdict would mean that the negligence was, 'so bad to amount to a very serious offence in a crisis situation'. The judge presented two crucial questions to the jury: 'Would a criminal conviction send out a wrong message to those who have to react to an emergency and take decisions? Would it be right to punish someone for taking a decision and not considering the consequences in a crisis situation?'

After 16 hours of deliberation the jury was told that a majority verdict would be accepted. Over five hours later Murray was acquitted. Eventually the jury was discharged without reaching a verdict on Duckenfield. The judge refused the application for a retrial; the case was over. A bereaved father reflected the families' shared feelings: 'I never expected a conviction, especially after I heard the judge's direction. But people on that jury held out. The case went all the way.'<sup>37</sup> The judge's direction covered the debates over circumstances, hindsight, foreseeability, negligence, obvious and serious risk, and what constituted a 'serious criminal act'. Yet it was his comments on the impact of a guilty verdict on the future actions and responses of emergency services' professionals that caused the most surprise and concern. This conflated and confused a policy matter with legal direction. Further, his casual remark that the '*mere* fact' that 96 people had died did not necessarily mean that a serious criminal act had been committed deeply offended and distressed the families.

The private prosecution of David Duckenfield and Bernard Murray was possibly the most significant in recent times. It was not malicious or vengeful; neither

was it about attributing *all* blame and *all* responsibility to two men. Given the DPP's decision not to prosecute and the lack of disclosure of evidence, the families had little choice. It remains instructive that the inquest jury and the private prosecution jury each requested further direction on negligence. In both courts the relationship between negligence and unlawful killing or manslaughter was central to their mammoth deliberations. The fact that there was a case to answer and, in the end, the jury remained deadlocked over Duckenfield's culpability, demonstrates that the families' pursuit of limited justice was not ill-conceived.

#### ‘JUSTICE FOR THE 96’

Before this Inquiry began, there were stories reported in the press, and said to have emerged from police officers present at the match, of ‘mass drunkenness’. It was said that drunken fans urinated on the police while they were pulling the dead and injured out, that others had even urinated on the bodies of the dead and stolen their belongings. Not a single witness was called before the Inquiry to support any of those allegations ... Those who made them and those who disseminated them, would have done better to hold their peace.<sup>38</sup>

Such was their strength and widespread dissemination, the ‘grave and emotive calumnies’, explicitly stated and unequivocally condemned by Lord Justice Taylor, not only persisted but intensified. The South Yorkshire Chief Constable, who had initiated the process of review and alteration of police recollections and had been contrite at the Taylor Inquiry, publicly welcomed the inquests as an opportunity to challenge Taylor's rejection of hooliganism and drunkenness as primary causes. The Inquiry had left his force with a ‘very strong feeling of resentment and injustice’.<sup>39</sup> In the build-up to both the preliminary hearings and the generic inquests, the media reiterated the police allegations. As individual cases were presented, recorded blood alcohol levels were announced. The inference was clear: presence of alcohol suggested culpability for the death of the person and for the deaths of others. Calculated or not, it was a process that attached blame to the deceased and brought shame on the bereaved.

Duckenfield's initial lie became part of a much wider and deeper deceit. The recording of blood alcohol levels by the Coroner, the orchestration of fabricated allegations by police officers and the reaffirmation by senior officers of charges of ‘hooliganism’ left a durable impression, reinforced and seemingly legitimated by journalists, politicians and academics. Writing in the *Sunday Telegraph* (4 February 1990) Simon Heffer argued that ‘the problems of Hillsborough, though Taylor was reluctant to say it, was one [*sic*] of hooliganism’. ‘However much it might enrage Liverpool’ he continued, ‘Liverpool fans were killed by the thuggishness and ignorance of other Liverpool fans.’ On his chat show

Terry Wogan commented that unlike soccer's other disasters, Hillsborough was 'self-inflicted'. Following a serious confrontation between English fans and the Rotterdam police, David Evans MP remarked that the Hillsborough disaster, as 'everyone in football knows although they won't say it, was caused by thousands of fans turning up without tickets, late and drunk' (Today, *BBC Radio 4*, 14 October 1993).

Brian Clough, Nottingham Forest's manager at Hillsborough, wrote that he would 'always remain convinced that those Liverpool fans who died were killed by Liverpool people' and 'had all the Liverpool supporters turned up at the stadium in good time, in orderly manner and each with a ticket, there would have been no Hillsborough disaster'.<sup>40</sup> His widely reported comments reignited the public debate over Hillsborough and hooliganism. Faced with a mass of criticism from a range of sources he remained unrepentant. He repeated his allegation that 'Liverpool people killed Liverpool people' on national television.<sup>41</sup> Reflecting on Liverpool City Council's call for a boycott on his autobiography he retorted, 'half of them can't read and the other half are pinching hub caps'.<sup>42</sup> There was astonishment, hurt and anger among the bereaved and survivors and many wrote directly to Clough.<sup>43</sup>

Academic researchers seemed to confirm the relationship between the disaster and violence. For example, in the preface to a book on soccer hooliganism, Kerr recalls watching on television the 'chaotic horror at Hillsborough' caused by a 'late inrush of spectators' who 'had run into an already full enclosure of Liverpool fans, causing a desperate crush'.<sup>44</sup> For Young, Hillsborough was one of 13 international 'noteworthy incidents of sports-related collective violence' between 1955 and 1989; '94 fans' had been 'crushed to death as fans arriving late attempted to force their way into the game'.<sup>45</sup> In a text on disasters and their aftermath Cohen wrongly attributes allegations about Hillsborough to Heysel: 'some fans ... urinated on the dead, on police and on ambulance men'.<sup>46</sup> Lewis and Scarisbrick-Hauser propose the application of McPhail's 'behavioural categories' 'as a guide for analysing crowd behaviours'. In their overview of contemporary football crowd safety reports they add four 'new' categories: 'climbing, falling, kicking and public urinating'. Without any attempt to evidence, locate or contextualize behaviour that might warrant inclusion in these categories, they attribute 'surging', 'jogging', 'climbing', 'falling' and 'public urinating' to fans' behaviour at Hillsborough.<sup>47</sup> Cohen situates this behaviour in Liverpool city's 'darker side: a massive drugs problem, endemic unemployment and a resultant capacity for mass disorder'. Liverpool fans had developed a 'ferocious reputation' bearing 'the hallmarks ... of Neanderthal man'.<sup>48</sup>

In an insightful analysis of the political-economic context of the disaster, Ian Taylor discusses the Thatcherite obsession with 'secure containment', resulting in the penning of fans, the acceptance of stadium neglect and the compromising of crowd safety. In a subsequent version of this article, however, while challenging 'a series of unpleasant stories ... circulat[ing] about the behaviour of Liverpool fans',

Taylor notes ‘persistent reports of some [fans] snatching wallets from the dead or dying and also of some obstructive action by drunken and aggressive fans’.<sup>49</sup>

These few examples are taken from a mass of media, political and academic commentary on Hillsborough. They are typical and they were not without consequences. When Lord Justice Stuart-Smith arrived in Liverpool to take evidence from bereaved families, some of the Hillsborough Family Support Group were delayed by a few minutes. On the steps of the Maritime Museum he asked the Group’s Secretary, ‘Have you got a few of your people or are they like the Liverpool fans, turn up at the last minute?’<sup>50</sup> At the opening of the private prosecution at Leeds Crown Court the judge warned families that ‘any display of campaigning, written or verbal, would constitute intimidation and be considered contempt of court’. Further, ‘any demonstration would jeopardise the trial’. Seven weeks later as the trial ended and the bereaved families left the court, ‘a West Yorkshire police video-surveillance team ... filmed their dignified, calm yet unbowed departure’.<sup>51</sup> Over time such comments and actions were regarded by the bereaved and survivors as intimidatory, constituting slurs on their reputation and that of their loved ones. ‘We felt like criminals’, was the common response.<sup>52</sup>

Following the publication of the Stuart-Smith report, a South Yorkshire Assistant Chief Constable wrote, ‘perhaps the greatest tribute to those who tragically lost their lives, and the firmest indicator that the deaths were not in vain, lies in the transformation of football stadia’.<sup>53</sup> He demonstrated an unwitting yet crass insensitivity towards the long-term suffering of the bereaved. As stated elsewhere, there was ‘not the slightest acknowledgement that it took a disaster, for men, women and children to be killed, to shake the reckless complacency that had infected football; its ownership, its organisation and its policing’.<sup>54</sup> Conn states that Taylor’s ‘most fundamental recommendations’, including a full ‘reassessment of policy for the game’, were ‘ignored’. Yet ‘directors wheeled and dealt to make fortunes for themselves’.<sup>55</sup> As the Premier League was launched its clubs were obliged to provide all-seater stadia. Supported, and dependent on, unprecedented investment from Rupert Murdoch’s media empire, Premiership clubs enjoyed unforeseeable, if not over-inflated, wealth and prosperity.<sup>56</sup>

However safer the reconstructed or new stadia were, and however welcome the facilities provided, the inexorable rise in football’s popularity – and notoriety – represents a triumph in rebranding, publicity and marketing. Personal reputations, David Beckham for example, were lost and rebuilt in the media-fuelled hype of celebrity and fame. Beckham’s club throughout this period, Manchester United, became the most wealthy sports club in the world and overseas players, many of great talent and all with agents, gravitated towards the new prosperity of the English Premiership. Meanwhile, back in Liverpool, the Hillsborough Family Support Group and the *Justice* campaigns provide a poignant reminder that, despite Taylor’s attribution of responsibility for the disaster, there followed no state prosecutions, no disciplinary proceedings and no full and appropriate disclosure of the documentary evidence. What remain are the inquest verdicts of

accidental death and a hung jury, unable to decide on Duckenfield's guilt. Stuart-Smith's judicial scrutiny was exposed as little more than a politically motivated attempt to quell the outrage of the bereaved and survivors. On finally receiving 'body files' detailing the last hours of their loved one's lives, families were soon aware that much of the 'factual' information provided was partial, inaccurate and/or contradictory.

The significance of the Hillsborough disaster is not limited to its broader context and immediate circumstances. A sequence of injustices followed: the appalling treatment of the bereaved and survivors by the police and other authorities in the immediate aftermath; the inhumane police and coronial procedures adopted for body identification of loved ones; the conduct and outcome of the inquests; the systematic review and alteration of police recollections, their transformation into criminal justice statements and Taylor's acceptance of the process; the judge's direction of the jury in the private prosecution of Duckenfield and Murray; the taking of body tissue from the deceased without the knowledge or permission of the bereaved. And Eddie Spearritt has received no information regarding his whereabouts between 3 p.m. and 5 p.m. when he was admitted to intensive care. The aftermath of the Hillsborough disaster reveals the shortcomings, failings and manipulation of the state's systems of inquiry and investigation. Over time, it shows how disproved and discredited accounts can be reconstituted and legitimated, how 'truth' can be degraded through propaganda to protect powerful interests and how public servants, supposedly legally and politically accountable, can evade the reach of the law.<sup>57</sup>

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